

**STATE PERSONNEL BOARD, STATE OF COLORADO**  
Case No. **2005B0053**

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**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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**WYNONNA MAHAFFEY,**  
Complainant,

vs.

**DEPARTMENT OF CORRECTIONS,**  
Respondent.

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Administrative Law Judge Mary S. McClatchey held the hearing in this matter on April 13 and 14 and May 5, 2005. Complainant appeared through David Osborne, Esquire. Respondent appeared through Christopher Baumann and Rick Dindinger, Assistant Attorneys General.

**MATTER APPEALED**

Complainant, Wynona Mahaffey (“Mahaffey” or “Complainant”) appeals her disciplinary demotion by Respondent, Department of Corrections (“DOC” or “Respondent”). Complainant seeks rescission of the demotion, reinstatement to her former position, and an award of attorney fees and costs.

For the reasons set forth below, Respondent’s action is **affirmed.**

**ISSUES**

1. Whether Complainant committed the acts for which she was disciplined;
2. Whether Respondent’s disciplinary action was arbitrary, capricious or contrary to rule or law.

**FINDINGS OF FACT**

1. Complainant commenced employment at DOC as a Parole Officer I in the Division of Adult Parole in 1996. She is a highly respected Parole Officer and received uniformly high performance ratings.
2. On November 1, 2001, Complainant was promoted to Parole Officer II, or Team Leader, and was assigned to the Grand Junction office.

3. As Team Leader, Complainant supervised six Parole Officers, many of whom had formerly been her co-workers. She had worked primarily in Craig prior to her promotion.
4. The chain of command in the Grand Junction office was as follows: Parole Officer I's; Team Leaders; Supervisors; Bonita McKee, Division Manager of the Western Region field operations (located in the Grand Junction office); Assistant Director Timothy Hand (located in metro Denver), and Jeaneene Miller, Division Director over the Division of Adult Parole and Community Corrections.
5. Complainant initially reported to Brad Carroll, who held the position of Supervisor or Parole Officer III. There were three Supervisors in the Grand Junction office. Carroll and Complainant had a very good working relationship.

### **John Orey**

6. When Complainant applied for the Team Leader position, John Orey, another Parole Officer with less seniority, also applied. Complainant and Orey were very close friends and had gone to college together. Prior to Complainant's promotion, Orey and Complainant had taken smoking breaks together on a daily basis.
7. After Complainant's promotion to Team Leader, Orey stopped talking to Complainant and he left the room if he saw her approaching. He was angry and resentful she had been promoted and he had not. Everyone in the Grand Junction office was aware of Orey's hostility to Complainant after her promotion. It caused strain in the office. Supervisor Carroll counseled Orey about his inappropriate behavior.
8. Within a few months of Complainant's promotion to Team Leader, Orey tested for and was promoted to a vacant Supervisor position. He therefore leapfrogged over Complainant.
9. In November 2002, Complainant was assigned to Orey as one of his subordinates. This was done for workload reasons; nonetheless, it was a very poor management decision. It was extremely awkward for Complainant to report to Orey when he had severed his friendship with her.

### **Evaluations of Complainant's Performance as Team Leader**

10. Complainant had difficulty making the transition to becoming a Team Leader. She was overwhelmed by the enormity of the position.
11. The Team Leader position is far more complex and demanding than that of Parole Officer. Complainant supervised five Parole Officers; she was responsible for oversight of each of their case loads (80 to 90 cases each); she maintained her own case load of approximately thirty parolees; she handled questions and issues that routinely arose in the staffing of the caseloads of her supervisees; and, she fielded complaints from the public.
12. Complainant was ultimately responsible for the oversight of approximately 450 cases.

13. Complainant's first quarterly evaluation, dated April 22, 2002, was at a Satisfactory level. She received a Needs Improvement in Job Knowledge. Complainant's immediate supervisor Bonita McKee, Manager of the Western Region, wrote the narrative section of the evaluation, closely tracking Complainant's strengths and weaknesses. She made several complimentary statements, noting her dedication and passion for the job. She also stated, "Wynona's first few months as a Team Leader have been stressful. Recently, we have changed her caseload assignment, and we have changed the composition of her team so that she should have more time to concentrate on getting her duties accomplished under less stressful conditions. This experience is also helping her mentor her team members in ways in which they can change their approach to assigned tasks in order to alleviate stress in their jobs."
14. McKee also noted, "A case review completed in January revealed some incongruent decisions that she made. She needs to improve the practice of quality decision making."
15. On Complainant's interim 2002 evaluation as a Team Leader, McKee took the proactive step of identifying the factors that Complainant needed to consider in making decisions on parolee case management issues. She made a list of ten specific "risk issues," or risk factors, to be addressed in all of her "decision making processes."
16. On May 1, 2002, Complainant signed a Performance Plan which included Individual Performance Objectives (IPO) under Job Knowledge. The IPO also listed the risk factors she must utilize in making case management decisions.

#### **January 15, 2003 Incident**

17. On January 1, 2003, the director of a halfway house where a parolee resided called Complainant. The parolee, C.K., a violent offender, was causing a disruption at the house and had stated to the residence director, "I will get you old man." Complainant discussed the incident with the director and asked him if he felt threatened by C.K.'s statement. The director informed her that he did not feel threatened, but that he didn't want him there anymore.
18. On January 2, 2003, Complainant reported the call to Orey, by telephone. Orey asked her if she had reported to the halfway house in person to assess the situation; she responded that she had been in no condition to do so, as it was ninety minutes away. Orey determined that Complainant had not adequately assessed the situation: she had not spoken to C.K. on the phone in an attempt to determine his overall demeanor about the situation, and had failed to utilize the risk factors set forth in her PEP Plan regarding offenders' behavior and case supervision decisions.
19. On January 15, 2003, Orey gave Complainant a Performance Documentation Form for her handling of the C.K. incident. Orey cited Complainant for failing to make a sound decision and to exercise good judgment, in violation of the DOC Staff Code of Conduct. Under the

controlling administrative regulations, C.K. was subject to a discretionary arrest for a technical parole violation, for having breached the halfway house rules.

20. On January 15, 2003, Complainant signed a Performance Improvement Plan (PIP) stating she would ensure that the risk factors list was available to her at all times, through April 15, 2003. The PIP also stated that she had read the Staff Code of Conduct and all administrative regulations governing arrest and detention of parolees.

### **February 7, 2003 Incident**

21. It is a parole violation for parolees to drink alcohol and to be in a bar. If a parolee commits this violation and it is the first such offense, the Parole Officer has the discretion to petition the Parole Board for an arrest warrant and parole revocation or not.
22. On February 7, 2003, Complainant went to a local night club/bar with friends. At approximately 9:15 p.m. she recognized a parolee drinking with two other men; the parolee also recognized her. When she left at 12:15 p.m., the parolee was still in the bar. The parolee in the bar with Complainant was arrested on February 8, 2003, at 2:25 a.m., for driving under the influence of alcohol.
23. Complainant should have contacted a parole officer immediately for back up, in order to take the parolee into custody. Or, she should have called a local police officer for an arrest.
24. The next morning, Complainant called the supervising parole officer to report having seen the parolee drinking in the bar. She also reported to her Supervisor that she had not had her cell phone, the phone lists of parole officers, or the list of risk factors on her person, in the bar that evening.
25. On March 27, 2003, McKee issued Complainant a Performance Documentation Form. It stated in part, "Her decision was to allow a known parolee to drink in a bar and do nothing. This lack of performance relates to Accountability/Commitment and the Department's Staff Code of Conduct policy. Such failure to perform her duties reflects discredit upon the individual as a correctional staff, tends to adversely affect public safety, (said parolee was arrested at 0225 hours on Feb. 8, 03 for DUI) and undermines the credibility of the Department within the community." McKee and Complainant both signed the Performance Documentation Form.

### **March 2003 Corrective Action; McKee Mentoring of Complainant**

26. On March 27, 2003, McKee imposed a Corrective Action (CA) on Complainant for her conduct on February 7, 2003. The CA noted her "lack of sound decision making . . . deficiency in judgement (sic) of public safety risks, and the need to recognize that her actions on or off duty reflect back to the Department's integrity and her failure to act in her capacity as a law enforcement officer when she witnesses a violation brings discredit to DOC as a whole."

27. The CA mandated that Complainant have with her at all times the following: the back-up duty officer phone list, the list of managers' and supervisors' phone and pager numbers, and the risk factor list. It further mandated that she use those criteria in all decisions regarding all case supervision issues; that she will read the DOC Staff Code of Conduct and AR 1250-39 Parole Revocation/Violation Process; report any parole violations she witnesses up the chain of command within 15 to 30 minutes; attend hostage training; read the book, "Soar with Your Strengths;" and meet with McKee and Orey to assess her strengths and weaknesses in order to meet three goals, 1. focus on her strengths and manage her weaknesses; 2. determine how her weaknesses interfere with her success as a Team Leader and a member of the regional Chain of Command; and 3. create a plan that will support her success as a Team Leader.
28. The CA continued on a second page. This page provides a working definition of strengths and weaknesses. It directs Complainant to utilize the book, "Developing the Leader Within You," as a tool and a guide in the process. McKee then outlines a highly detailed process for achieving Goals 1, 2, and 3. For example, Goal 1, Focus on Strengths and Manage the Weaknesses, consists of four separate Objectives. The four objectives, which Complainant, McKee, and Orey are to perform together, are: identify job tasks for the Team Leader position, rank them as strong or weak for Complainant; identify the job tasks that are of the most concern; identify if the tasks and weaknesses have a link; and determine if the weaknesses are manageable through training, practice and skill building.
29. McKee turned the Corrective Action into an opportunity to mentor Complainant in the Team Leader position. McKee, Complainant, and one of the Supervisors spent an entire day working through the goals and objectives with Complainant. During this meeting, McKee made specific suggestions on how Complainant could improve her working relationship with those she supervised. For example, she suggested that Complainant ask Parole Officer Walters to give staff an in-service training on how to handle sex offenders, an area of expertise. She felt this would improve Walters' morale.
30. McKee spent her own money to purchase the books on leadership for Complainant.

#### **August 27, 2003 Failure to Arrest.**

31. Parole Officer Fuchs was a new officer in the Grand Junction office. One of the cases he managed was that of C.L., who had committed a parole violation. Fuchs had obtained a warrant for the arrest of C.L. from the Parole Board. Complainant was aware that Fuchs had obtained the warrant for C.L.'s arrest and that he thought C.L. should, in his judgment, be arrested.
32. On August 27, 2003, Complainant had a meeting with C.L. and then allowed him to leave, electing not to arrest parolee C.L.
33. Officer Fuchs was extremely upset about Complainant's refusal to back him up in his decision on how to handle C.L.'s case. He and Complainant had a heated discussion on the telephone about the issue. Complainant did not appropriately handle the situation.

### **Needs Improvement Evaluation for April through October 2003**

34. During the period of mid-2003, Complainant had a difficult time controlling her anger in the office. She was on edge, easily triggered by events. Her general demeanor was negative at times, and she had difficulty communicating with her staff. Her relationships with some staff became strained.
35. Complainant's six-month evaluation for the period April through October 2003 was an overall Needs Improvement. She received a Satisfactory rating only in the Customer Service factor.
36. This evaluation contained detailed comments, "She has improved in staffing more cases with her supervisor during this rating period. Often she fails to seek and consider ideas from certain team members before making decisions. She needs to improve in the area of listening to team members concerns regarding supervision issues."
37. It further stated, "CPTL Mahaffey's demeanor has become one in which personal positive regard of others is not being expressed during times of problem resolution and/or stress as previously demonstrated by her. This demeanor results in negative interactions with her subordinates and other staff within the region."
38. The evaluation further noted Complainant's continued difficulty in making good decisions and exercising sound judgment, and that she was not using the decision making matrix as required by the March 2003 corrective action and PEP plan. The evaluation referenced her failure to arrest C.L. on August 27, 2003.
39. Complainant refused to sign this evaluation, largely due to the erroneous statement it contained citing her for failing "to meet all time frames when filing reports, parole complaints and other paper driven paperwork." In fact, Complainant met all required timeframes except one during this rating period.

### **October 2003 Corrective Action**

40. On October 7, 2003, McKee imposed a Corrective Action on Complainant in connection with the Needs Improvement evaluation. This CA directed her to refer to the decision matrix (of risk factors) when making all case management decisions and to obtain approval prior to leaving Grand Junction, due to time management issues.
41. The CA stated in part, "The following areas need corrections: Accountability/Organizational Commitment, Job Knowledge, Communication, Interpersonal Skills. Overall these areas provide Officer Mahaffey with the qualities and skills to execute her duties as a team leader. Failure to perform at a satisfactory level in these core competencies indicates a significant deficit in the ability to lead others."

42. At the time McKee gave Complainant the CA, she asked whether any personal or other issues were interfering with her work. Complainant denied that anything in her personal life was interfering with her work, and stated that she was fine.
43. McKee advised Complainant that she had to address her anger issues, and referred Complainant to the state employee assistance program.

#### **Fall 2003 Meeting with McKee Regarding Use of Force Incident**

44. In October 2003, after an attempted arrest of a parolee had gone badly, McKee called a meeting with the junior officers and other supervisors to review what had occurred. After a junior officer had presented his side of the story, McKee responded in a manner that led Complainant to feel that McKee was condemning the officer. Complainant snapped at McKee, "You be quiet," pointing her finger at McKee as she spoke. McKee remained quiet for the duration of the meeting.
45. This encounter had the predictable effect of making McKee feel as though Complainant had undercut McKee's authority in front of other employees. The next day, McKee met with Complainant in private, and told her, "I could have thrown you out of the fucking room yesterday." It is likely that at this point, McKee's attitude towards Complainant changed for the worse; she had invested a lot in Complainant's success as a Team Leader, and she probably felt Complainant had not benefited from those efforts.

#### **January 24, 2004 Incident with I.C.**

46. On January 24, 2004, Complainant encountered one of her own parolees in a bar, I.C. This parolee had a violent history, having once bitten a bouncer at a bar.
47. Complainant did not report this contact up the chain of command, as she had been directed to do in a previous CA. She approached I.C. and told him to get his coat and leave the bar. In doing so, she placed those in the bar at risk of a violent incident, and placed herself at risk of personal harm.
48. The next day, Complainant advised Orey about the I.C. incident in the bar. When McKee learned about it, she questioned Supervisors Orey and Carroll about whether Complainant had taken the proper approach with I.C. Both felt that Complainant should have called for back-up prior to making any contact with I.C.
49. On February 2, 2004, Orey sent a memorandum to Complainant concerning the I.C. incident, stating in part, "The fact that the parolee left the area at your request was positive and may have prevented future problems that night. I did review the parolee's profile and it showed that the subject was sentenced for assault. My concern, not only because of the sentence, but given the location of your contact with him was for your safety. My preference concerning this contact was that you contacted/phoned either one of the unit CPO's or myself to handle the contact and the immediate disposition. In the future please do not place yourself in such a safety compromising position."

50. When Complainant received this memo she became extremely upset. She felt that if Orey were truly concerned about her safety, he would not have written a memo on it. She felt he was attempting to create a paper trail for disciplinary purposes.
51. McKee arranged to have a meeting with Complainant about the C.I. incident. During the meeting, Complainant became so emotionally distraught that she left the meeting. McKee said that she was not done with the meeting yet. Complainant said, "Too bad," and left.
52. McKee wrote a memo to her supervisor, Tim Hand, regarding the meeting and the I.C. incident. The matter was referred to another Assistant Director of Adult parole and Community Corrections, Brian Gomez, located in the Denver area.
53. On February 13, 2004, Gomez issued a notice of pre-disciplinary meeting to Complainant concerning the I.C. incident and her conduct in the meeting with McKee. On March 18, 2004, they had the meeting; Complainant had an attorney present to represent her.

#### **April 2004 Corrective Action**

54. On April 7, 2004, Gomez issued a Corrective Action to Complainant. It stated in part,

"I have determined that your actions, confronting an inmate that may have been under the influence, as well as having a history of violence, without assistance and/or supervisory guidance and demonstrating blatant disrespect toward managerial staff; exhibits an unacceptable application of discretion, even though you described your actions as reasonable. Your poor decision making skills demonstrates unacceptable job performance, which compromises the mission of this agency and raises significant public safety issues. Therefore I have no choice but to administer corrective action."

55. On April 26, 2004, Complainant submitted a written statement of explanation, to be attached to the CA. Regarding her interaction with McKee, she stated, "Ms. McKee has advised this office on numerous occasions that should we find ourselves in an adversarial situation where tempers are flaring, then remove your self from that situation. (sic) I simply removed myself from a very adversarial situation."
56. Complainant also noted that at the time she approached parolee I.C. in the bar, her "companions and associates on that evening, although I would not liked to have involved them in my professional life, would more than willingly assisted me had the need arisen." She also noted that had she asked for help and others refused, it would have been a misdemeanor offense on their part.
57. In her statement, Complainant also noted that Supervisor Orey's memo, while appearing innocuous on the surface, was actually an attempt to create a paper trail for future disciplinary action.



### **July 15, 2004 Rude Telephone Message**

58. On July 15, 2004, Complainant attempted to call the office. The receptionist did not pick up the phone, but allowed it to go into voice mail; this was common. Complainant was extremely frustrated, and stated, "I am tired of you not answering the phone," in a short tone of voice.

### **Relationships with Subordinates**

59. Parole Officer Dwayne Robinson worked in the Grand Junction office for eight years. He was generally a solid employee with a very positive attitude; he never complained.

60. Robinson wrote his parolee reports in all capital letters. Management historically allowed him to do so. However, in 2004, management issued directives mandating that all reports must be professionally presented; the directive made it clear that all capital letters would no longer be acceptable.

61. Robinson continued to issue his reports in all capital letters.

62. As Robinson's team leader, it fell to Complainant to enforce the directive. Complainant wrote two sticky notes to Robinson, ordering him to utilize appropriate lower case and capital letters in his reports.

63. Robinson did not want to change his report writing method. He was upset. He went to Orey to complain.

64. Complainant learned from another management team member that Robinson was angry about the report writing issue. She also heard a rumor that Robinson was actually considering transferring out of the Grand Junction office.

65. Complainant never went to see Robinson on a one-to-one level as his direct supervisor to discuss his concerns and to resolve the issue. Instead, at the next team meeting, she told the group that she apologized for any hurts or slights that she had given which offended anyone. She stated she was not picking on anyone or attempting to nitpic reports. She said it was her job to assure all reports were correct and that if there is an error in spelling or grammar, she would send it back for correction.

66. Robinson expressed no further concerns about Complainant's management style.

### **Tasha Dobbs**

67. Tasha Dobbs was a relative newcomer to the Parole Officer position, having started in 2002. Dobbs was not trained well in the position and was quite young. In 2004, she became overwhelmed in the position due to the loss of a close family member and the fact that she had an extremely large caseload.

68. Dobbs was somewhat of a problem employee for Complainant. Complainant was impatient with Dobbs and was often short with her when Dobbs did not perform up to standard. When Dobbs voiced concerns to Complainant about her large caseload, Complainant did not count each Officer's case load to verify whether the concern was justified. She told Dobbs that that was the way it was and there was nothing she could do about it. Dobbs went to Orey, who confirmed that Dobbs had a larger caseload than Complainant's other supervisees, and shifted work to other employees.
69. In August 2004, one of Dobbs' parolees had to be extradited back to Colorado from Hawaii. Everyone in the Grand Junction office, including Complainant, wanted to make the trip to Hawaii. The agency policy was to send the officer assigned to that parolee; therefore, Complainant was not allowed to make the trip.
70. In August 2004, Complainant was in a dark mood and brooded around the office for a period of weeks, due to her resentment about not going to Hawaii. She was sometimes short and rude in responding to subordinates' questions. She had little patience for having to address performance issues.
71. On August 12, 2004, at approximately 3:30 p.m., Complainant had a meeting with Dobbs about one of her cases. Complainant used a rude tone of voice with Dobbs when questioning her about one of Dobbs' cases. Dobbs had brought three sets of documents involving parole revocation complaints to Complainant. One complaint had to be filed that day or it would no longer be valid. Complainant needed a report and an investigation from Dobbs, and asked her to get them to her before the end of the day.
72. Dobbs informed Complainant that she had missed lunch that day, had previously obtained permission to leave at 4:00 p.m., and still had to file the complaint on the parolee. Complainant became very frustrated with Dobbs, lost control of temper, sighed and said, "Okay, just go." Complainant put her head down as she said this to Dobbs.
73. Dobbs was extremely upset by this response from Complainant. She felt mistreated. It had become very difficult for Dobbs to communicate with Complainant.
74. Dobbs went to Orey's office on the verge of tears after this incident and said that she was having a tough time coming to work because of how she was being treated by Complainant.
75. Orey told Complainant that Dobbs had come to him so upset about this incident that she was nearly crying. Complainant did not follow up on this information. She never approached Dobbs to assess the root of her problem, clear the air, discuss their difficulties, or identify ways to improve their working relationship. Complainant ignored the problem.
76. While Dobbs was a "problem employee" for Complainant in mid- to late-2004, Complainant failed to use appropriate supervisory skills to assess and productively address the problems Dobbs was having.

77. On August 17, 2004, Complainant reported to Brad Carroll, one of the Supervisors, and McKee that she felt Dobbs was being rewarded for poor work in being allowed to go on the Hawaii transport.

### **Karen Walters**

78. Complainant also had a strained relationship with Parole Officer Karen Walters. The two have conflicting philosophies towards parole management. Complainant embraces a “social worker” approach to parole work; she believes parole officers are there to assist convicts in their transition back to society, and that parolees have paid their debt to society. Walters possesses a criminal justice perspective on parole work, and generally believes that any parole violations should result in the parolee being sent back to jail. Complainant often disagreed with Walters on her approach to case management.
79. Complainant received several complaints about Walters’ approach to her cases from families. She also received complaints from other professionals regarding Walters’ disrespectful attitude. Most of the staff members in the Grand Junction office are intimidated by Walters.
80. Walters is uniformly defensive to suggestions from others as to how to manage her cases, and she was hostile to Complainant’s attempts to supervise her case management.
81. Complainant tried to counsel Walters on her cases. When Walters was defensive, Complainant stated to her, “I don’t care if you like me, but I’m your team leader.” Sometimes Complainant made decisions on Walters’ cases without adequately consulting Walters. Complainant did not discuss their differences in philosophy towards parole management with Walters.
82. Complainant did not make an effort to improve her working relationship with Walters. She accepted that she had a strained relationship with her.

### **August 2004 Memo from Carroll to McKee**

83. In August 2004, the increased tension in the Grand Junction office became difficult for many employees to endure. In late August, 2004, Brad Carroll, who was Complainant’s direct supervisor during sporadic periods over the course of 2001 through 2004, returned from vacation. After a week back in the office, he wrote a memo to McKee about his concerns, stating in part,

“I returned to work last Monday following a week of vacation. My immediate impression of the office was one in which employees were not getting along with one another. There seemed to be a lot of tension. I made this comment to another officer, and the officer agreed with me. On this same day, I observed Tasha [Dobbs] in the parking lot as she was coming into the office. She seemed down, and under some tension. I talked with her later on that afternoon, and again she seemed down. I did not ask her if anything was bothering her, and I made no

attempts to check to see if my observations were accurate. I simply assumed that this must be some residual feelings from a couple of weeks ago when she had been corrected by Wynona [Complainant] for her handling of the Cook case and for not answering her pager. And that whole incident seemed to be fueled by the fact that Tasha had been sent to Hawaii on the fugitive trip rather than Wynona.”

84. Carroll was one of Complainant’s allies in the office and worked to support her in her role as Team Leader. In fact, he repeatedly spoke with Orey about improving his level of professionalism toward Complainant. Carroll’s motive in writing the memo was to improve office morale, not to cause problems for Complainant.

#### **August 18, 2004 Meeting with McKee and Carroll**

85. On August 18, 2004, McKee held a meeting with Complainant and Carroll to discuss the tension in the office. The purpose of the meeting was to attempt to develop positive solutions to the problems in the office. McKee reviewed her concerns about Complainant’s strained relationships with Dobbs, Walters, and even Robinson. McKee stated that Robinson was considering a transfer out of the Grand Junction office; this was an overstatement, based only on rumor. Complainant felt that she did not have the support of her staff.
86. At the end of the meeting, McKee asked Complainant if she would prefer to remain a Team Leader or to simply step back into the Parole Officer position. Complainant, overwhelmed by recent events, immediately stated that perhaps she would like to go back to being a Parole Officer. McKee stated that she did not want an immediate response, and asked Complainant to sleep on it over the weekend and give her an answer later.
87. Complainant learned that she would suffer a 10% pay reduction in the event she voluntarily demoted back to the Parole Officer position. She also reflected on whether she sought to remain in her Team Leader role. She decided to stay in the position and informed McKee of that.
88. Complainant had been considering a voluntary demotion for some time prior to this August 18 meeting and had discussed it with another Grand Junction supervisor.
89. On August 18, 2004, McKee wrote a memo to Tim Hand, Assistant Director of Adult Parole, regarding the meeting. She described the meeting in great detail. She noted that she had again counseled Complainant to focus first on the reasons for the performance problem with her supervisees, then on the problem itself.
90. On August 27, 2004, McKee wrote a four-page memo to Tim Hand, Assistant Director of Adult Parole, providing a detailed list and timeline of all performance problems Complainant had had as Team Leader. The memo summarized all performance reviews, the incidents related above herein, the plans they had developed to improve her performance; and the corrective actions. McKee concluded with, “Recommendation, Rule R-6-10 Fact Finding Meeting . . . due to the fact she is presently in a corrective action plan which was implemented on July 12, 2004. In October 2003, nine months ago, she was told that she had

significant deficits in her ability to lead others and since that time she has had two more corrective actions.”

### **Pre-disciplinary Meeting**

91. Complainant, her attorney, and Hand attended the pre-disciplinary R-6-10 meeting on October 14, 2004. Hand reviewed several of the events described in McKee’s August 27, 2004 memo in detail. The primary focus of the meeting was how Complainant handled difficulties in supervising those in the office. The discussion was long and thorough.
92. Hand asked Complainant about the August 12, 2004 meeting with Dobbs, after which Dobbs went to Orey’s office very upset; he specifically asked if she was angry with Dobbs when she told her to “just go.” Complainant stated, “I was frustrated Tim, not angry. I was frustrated. I love my job. When I see and have to deal with incompetence it frustrates me. And obviously when I get frustrated I sometimes don’t say things right.”
93. Hand asked Complainant if Orey had informed her that Dobbs had left her office very upset, crying. She said yes. Hand then asked her if she had gone back to Dobbs to talk about it, to ask her if she had upset or offended her. Complainant said that she had not. When Hand asked her if it had occurred to her to do so at the time, she said it had not. As they discussed this further, Complainant said, “it’s very hard for me, one thing that I have to work on. It’s confronting people in a manner in which there is positive results from it.”
94. Hand then asked her, “What have you done to address that?” Complainant told him that she had informed her team members if they are overworked and need assistance, to come to her and she will help them with complaints or other work. She said she is also committed to handling issues in a calm manner, showing her employees how to do the job right, and then reinforce that they can come to her for help.
95. Hand discussed the Hawaii trip Dobbs took. Complainant confirmed she had wanted to go on that trip and was irritated about not being able to go. She also gave several examples of Dobbs’ poor performance.
96. Hand discussed with Complainant whether she would feel comfortable discussing a personal issue she knew might be interfering with that employee’s work performance. Complainant stated that she would not.
97. Complainant acknowledged that staff were reluctant to go to her to discuss issues or problems, and that they went to Orey instead.
98. Hand asked Complainant if she had ever sat down with Walters and said, our relationship is strained, what can we do to improve it? Complainant said no, that she had stated, “I did tell her I don’t care whether you like me or not but I am your team leader. I am the next in the chain of command. We need to work from there. And that’s been quite a while ago.”

99. As the meeting drew to a close, Hand asked Complainant if she had stated to McKee and Carroll that she would like to step back to a line Parole Officer position. She confirmed that she had stated that, but that she had reconsidered after reflecting on her DOC career and her financial situation. She stated she would like to be a Supervisor, ultimately, continuing, "I love my job in terms of working with the people, trying to get them turned around so that they are a productive member of society. That's along with the public safety issues. That's my primary goal. I love working with the people. I have good rapport with most of my people."
100. Hand then asked whom she meant by "my people." She responded, "My clients." He clarified, the "offender population?" and she confirmed that was correct.
101. Complainant closed by stating she had made several improvements in recent months. She had informed Walters how much she appreciated her hard work. She stated that 2004 had been "a really bad year" and that she looked forward to a better 2005.
102. Complainant's attorney then made a closing statement. He pointed out that McKee had not complimented Complainant in her job and that perhaps a negative culture had been handed down to her. He noted that no one in the office gets along with Walters. He noted that the office staff are not children, they are adults who need to take direction when given and simply do their jobs. He brought attention to the fact that the work is hard and the offenders are violent individuals; it is therefore no surprise that all of the staff, including Complainant, are feeling the pressure. He closed by asking Hand to consider her strong performance history as a Parole Officer, the steep learning curve she had had in the Team Leader position, and asked Hand to give her a second chance.
103. Hand determined at this meeting that Complainant had not appropriately managed those she supervised. He was particularly concerned about the fact that despite her knowledge of two staff feeling estranged from her, she had done nothing to attempt to address those situations.
104. Prior to making his decision, Hand interviewed other staff in the Grand Junction office and reviewed Complainant's personnel file. He attempted to listen to the tape recording of the July 15 voice mail, but learned it was unintelligible.
105. On November 2, 2004, Hand sent a letter to Complainant demoting her to Parole Officer.

## **DISCUSSION**

### **I. BURDEN OF PROOF**

Certified state employees have a property interest in their positions and may only be disciplined for just cause. Colo. Const. Art. 12, §§ 13-15; § 24-50-125, C.R.S.; *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). Such cause is outlined in State Personnel Board Rule R-6-9, 4 CCR 801 and generally includes:

- (1) failure to comply with standards of efficient service or competence;
- (2) willful misconduct including either a violation of the State Personnel Board's rules or of the rules of the agency of employment;
- (3) willful failure or inability to perform duties assigned; and
- (4) final conviction of a felony or any other offense involving moral turpitude.

In this *de novo* disciplinary proceeding, the agency has the burden to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Kinchen, supra*. The Board may reverse the agency's decision if the action is found arbitrary, capricious or contrary to rule or law. Section 24-50-103(6), C.R.S.

## **II. COMPLAINANT COMMITTED THE ACTS UPON WHICH DISCIPLINE WAS BASED**

Respondent has proven by a preponderance of evidence that Complainant committed the acts upon which discipline was based. Complainant was a top notch parole officer, so successful in the position that she was moved up the chain of command. However, despite McKee's dedicated efforts to mentor Complainant as a manager, Complainant never adjusted to the Team Leader position. The demands of the position so overwhelmed her that she was on edge most of the time, unable to be calm, thoughtful, and unemotional in her supervisory role. Instead, she often snapped at others because she was under so much stress. In addition, the position was so challenging to Complainant that it impaired her judgment in managing her own case load.

Complainant had the best of motives. She is a deeply dedicated member of the parole officer team and clearly thrives in that position. She also covets her career in the Division of Adult Parole. Leadership in the Division recognize her dedication, gifts, and talents as a parole officer. However, they made the right decision to remove her from the supervisory role. As Supervisor Brad Carroll testified, it just didn't work out.

Complainant argued at hearing that her inappropriate conduct in the Fall 2003 meeting with McKee led McKee to "retaliate" against her by demoting her. To the contrary, the evidence demonstrated that McKee continued to give Complainant extra chances to succeed in the position. Complainant was somehow unable to change her behavior. For example, she continued to lose her temper at those around her, including the telephone receptionist. And, after Respondent ordered her to call up the chain of command if she encountered a parolee in a violation situation, she ignored this directive, approaching a parolee alone in a bar and telling him to leave. This decision placed everyone in the bar, including herself, at risk of violent attack.

Complainant also argued that once McKee had turned against her, she used Orey as the means to have her demoted. While there is no question McKee should not have assigned Orey to be Complainant's supervisor, the evidence did not support the contention that Orey's efforts led to her demotion. Orey had minimal involvement in any of the events that led to Complainant's demotion. Moreover, Brad Carroll, the other Supervisor, authored one of the Needs Improvement evaluations, drafted the August 2004 memo to McKee regarding poor office

morale, and was cited in the demotion letter as having stated Complainant had difficulty making good decisions.

### **III. THE DISCIPLINE IMPOSED WAS NOT ARBITRARY, CAPRICIOUS OR CONTRARY TO RULE OR LAW**

In determining whether an agency's decision is arbitrary or capricious, it must be determined whether the agency has 1) neglected or refused to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it; 2) failed to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; 3) exercised its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Lawley v. Department of Higher Education*, 36 P.3d 1239, 1252 (Colo. 2001).

Assistant Director Hand conducted a thorough investigation prior to taking action in this case. The pre-disciplinary meeting was an in-depth discussion of Complainant's supervisory style, and how she had handled the challenges presented by those she supervised. Hand gave Complainant a full opportunity to demonstrate to him that she could handle the Team Leader job. By the end of the meeting, however, it was clear that Complainant most enjoyed the direct parole officer job duties, and found the remaining managerial component of the position very challenging, even after three years in the job. Hand carefully considered the evidence he had before him, and made a reasonable decision based on that information.

Lastly, it is noted that Respondent appropriately used progressive discipline with Complainant. After three corrective actions and a history of poor performance evaluations, Complainant was on notice of what she needed to do to improve. She was simply unable to perform in the Team Leader position at a satisfactory level.

Complainant requested an award of attorney fees and costs. Because she has not prevailed in this action, she is not entitled to such an award.

### **CONCLUSIONS OF LAW**

1. Complainant committed the acts upon which discipline was based;
2. Respondent's action was not arbitrary, capricious, or contrary to rule or law;
3. Complainant is not entitled to an award of attorney fees and costs.



### **ORDER**

The action of Respondent is **affirmed**. Complainant's appeal is dismissed with prejudice.

DATED this \_\_\_\_ day  
of **June 2005** at  
Denver, Colorado.

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Mary S. McClatchey  
Administrative Law Judge  
633 17<sup>th</sup> St., Suite 1320  
Denver, CO 80203

### **CERTIFICATE OF MAILING**

This is to certify that on the \_\_\_\_ day of **June 2005**, I placed true copies of the foregoing **INITIAL DECISION; NOTICE OF APPEAL RIGHTS** in the United States mail, postage prepaid, addressed as follows:

David R. Osborne  
Hamilton & Faatz  
1600 Broadway, Suite 500  
Denver, Colorado 80203

And interagency mail to:

Rick Dindinger  
Assistant Attorney General  
Employment Section  
1525 Sherman Street 5<sup>th</sup> Floor  
Denver, Colorado 80203

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Andrea C. Woods